

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

In the Matter of:)
)
David O. Caplan,)
)
Respondent)
_____)

Proceeding No. D2022-20

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, David O. Caplan (“Respondent”) is hereby suspended from the practice of patent, trademark and other non-patent law before the United States Patent and Trademark Office (“USPTO” or “Office”), for violation of 37 C.F.R. § 11.804(h).

Background

On September 9, 2022, a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Notice and Order”) was sent by certified mail (receipt no. 70220410000250013694) notifying Respondent that the Director of the Office of Enrollment and Discipline (“OED Director”) had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (“Complaint”) requesting that the Director of the United States Patent and Trademark Office impose reciprocal discipline upon Respondent identical to the discipline imposed by the February 11, 2022, Final Judgment and Order of the Presiding Disciplinary Judge of the Supreme Court of Arizona in *In re David Caplan*, PDJ No. 2021-9108, suspending Respondent from the practice of law in that jurisdiction for four years and conditioning reinstatement on his payment of restitution to the complainant. The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the

imposition of reciprocal discipline identical to that imposed by the February 11, 2022, Final Judgment and Order of the Presiding Disciplinary Judge of the Supreme Court of Arizona in *In re David Caplan*, PDJ No. 2021-9108, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

The Notice and Order was delivered to Respondent on September 15, 2022. Respondent has not filed a response to the Notice and Order.

Analysis

In light of Respondent's failure to file a response, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and Respondent's suspension from the practice of patent, trademark and other non-patent matters before the USPTO is the appropriate discipline.

ACCORDINGLY, it is hereby **ORDERED** that:

1. Respondent is suspended from the practice of patent, trademark, and other non-patent matters before the USPTO for four years, commencing on the date of this Final Order;
2. Respondent shall remain excluded from the practice of patent, trademark, and other non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60. Respondent's reinstatement is conditioned on his payment of restitution to the complainant as set forth in the February 11, 2022, Final Judgment and Order in *In re David Caplan*, PDJ No. 2021-9108;
3. The OED Director shall electronically publish the Final Order at OED's electronic FOIA Reading Room, which is publicly accessible at: <http://foiadocuments.uspto.gov>;
4. The OED Director publish the following Notice in the *Official Gazette*:

Notice of Suspension

This notice concerns David O. Caplan of Phoenix, Arizona, who is a registered patent attorney (Registration Number 41,655). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Caplan be suspended from practice before the USPTO in patent, trademark, and other non-patent matters for four years for violating 37 C.F.R. § 11.804(h), predicated upon being suspended from the practice of law by a duly constituted authority of a State. His reinstatement to practice before the USPTO is conditioned upon paying restitution to the complainant in the below discussed February 11, 2022, Final Judgment and Order in *In re David Caplan*, PDJ No. 2021-9108.

By Final Judgment and Order dated February 11, 2022, in *In re David Caplan*, PDJ No. 2021-9108, the Presiding Disciplinary Judge of the Supreme Court of Arizona suspended Respondent from the practice of law in that jurisdiction for four years for violating various provisions of the Arizona Rules of Professional Conduct and further ordered, as a condition of reinstatement, that he pay restitution to the complainant. The Presiding Disciplinary Judge found that Respondent received funds from his client to pay patent application fees with the USPTO. The Presiding Disciplinary Judge found that in approximately 46 cases, Respondent failed to make the required payments, resulting in the abandonment of certain patent applications. The Presiding Disciplinary Judge found that Respondent did not timely advise his client of the abandonments or of his failure to make the necessary payments, Respondent commingled client funds with his business and personal funds, and Respondent failed to adhere to rules and guidelines governing client trust accounts. The Presiding Disciplinary Judge also found that Respondent falsely represented to the Arizona State Bar that he maintained professional liability insurance when, in fact, he had been uninsured since 2016. The Presiding Disciplinary Judge found that Respondent admitted to violating A.R.S. Sup. Ct. Rule 42, E.R. 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and A.R.S. Sup. Ct. Rule 43 (trust account/deposit of funds). The Presiding Disciplinary Judge based these findings on factual statements made in an Agreement for Discipline by Consent that was jointly filed by Mr. Caplan.

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's FOIA Reading Room, located at: <https://foiadocuments.uspto.gov/oed/>;

5. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the

state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

6. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58; and

7. The USPTO shall dissociate Respondent's name from any Customer Number(s) and USPTO verified Electronic System account(s), if any.

Users, Shewchuk, David
Digitally signed by Users, Shewchuk, David
Date: 2022.11.08 07:27:06 -05'00'

Date

David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office